IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 80 OF 2004

IN
WRIT PETITION NO. 2980 OF 2003

M/s. R. Nowroji & Co. ... Petitioner

Vs.

Shri. Francis E. Lobo & anr. ... Respondents

Mr. S.K. Talsania with Mr. N. Engineer i/by Ashok G. Purohit for Petitioner.

Mr. S.N. Deshpande for Respondent No. 1.

CORAM : F.I. REBELLO,J.
DATED : OCTOBER 08, 2004

P.C.

1. Petition has been admitted and interim stay granted of reinstatement. In that light of the matter, Respondent has applied under Section 17(b) of the Industrial Disputes Act. The Respondent workmen is aged 70 years. The services of the workmen came to be terminated and by the impugned award dated 14.7.2003, the learned Industrial Tribunal has directed reinstatement of the respondent with continuity of service from 27.8.1990.

2. In the normal course, once the award for reinstatement is stayed and on the workman complying with other procedural requirements, the order for payment under Section 17(B) must follow. In the instant case, however, the petitioners contend that age of superannuation is 58 years and

as such there can be no question of reinstatement. The Petitioner is today aged 70 years. It is therefore, submitted that at the highest respondent would be entitled to the relief under Section 17(B) till he reaches the age of superannuation. The other reliefs would be subject to final order to be passed in the pending writ petition.

3. On the other hand, on behalf of the respondent workmen, their learned counsel contends that there is no age of superannuation applicable to the establishment of the petitioners. Reliance is placed on the judgement of the Apex Court in the case of Abdul Rehman Vs. National Textile Corporation Ltd. and Others as also in the case of Delhi Cloth and General Mills Ltd. Vs. Shambhu Nath Mukherjee, 1984 LAB I.C. 1743 to contend that if there is no age of retirement provided, the employer is bound to continue the workmen in service and he will be entitled to serve till the date of his death or unless he has been found medically unfit to carry on his duties. This is question which will arise for determination on the facts of the present case. The contention advanced on behalf of the Petitioner is that considering the custom prevailing in the industry, at the highest age of retirement would be 60 years bearing in mind the age of retirement as provided in the Shops & Establishments Act in the State of Maharashtra. Considering the above, to my mind at the highest,

till the hearing and final disposal of the petitioner, petitioner can be called upon instead of depositing compensation under Section 17(B) to deposit the entire relief which the workman would have been entitled to if he was reinstated in service and upto the age of 60 years. The Petitioner employer has so done.

4. In the light of the above, the following order :

. The employer is called upon to deposit back wages atleast as and upto the workman would have attained the age of 60 years which would be upto 31.3.1995. An amount of Rs.92,000/- has been deposited. From the said amount, the Respondent workman would be entitled to withdraw the sum of Rs.60,000/- without any security. The balance of Rs.32,000/- will be invested in a nationalized Bank initially for the period of two years and thereafter for successive periods till the hearing and final disposal of the petition.

. Motion stands disposed of accordingly.

. All parties to act on authenticated copy of this order issued by the Personal Secretary.

(F.I. REBELLO,J.)